

### **Remarks**

Favorable reconsideration of this application is requested in view of the following remarks. For the reasons set forth below, Applicant respectfully submits that the claimed invention is allowable over the cited references.

The final Office Action dated April 7, 2004, indicated that claims 1-27 and 29-32 are rejected under 35 U.S.C. § 103(a) over *Bialik et al.* (U.S. Patent No. 5,568,588) in view of *Adoul et al.* (U.S. Patent No. 5,754,976); and claim 28 is rejected under 35 U.S.C. § 103(a) over *Bialik et al.* in view of *Adoul et al.* and further in view of *Sklar* (Digital Communications Fundamentals and Application).

Applicant respectfully traverses the Section 103(a) rejections and requests that the finality of the Office Action be withdrawn as well as the time period for responding reset. As discussed below, the Examiner did not respond to Applicant's previous arguments regarding the propriety of the proposed combination. While Applicant stands by the previously presented arguments (and incorporates them by reference), Applicant further submits that the stated motivation for the flawed proposed combination is untenable.

### **Examiner Did Not Address Previous Arguments**

The instant Office Action merely repeats the previous rejections without addressing Applicant's arguments against them. The MPEP dictates that the Office Action should take note of the applicant's arguments and answer the substance of them. *See* MPEP § 707.07(f). This is consistent with the purpose of aiding the applicant in judging the propriety of continuing the prosecution, as indicated in 37 C.F.R. § 1.104(a)(2) and 35 U.S.C. § 132. MPEP § 707.07(f) further urges that the Examiner state the reasons for his or her position (regarding Applicant's arguments) in the record. Because the Office Action fails to comply with this requirement, Applicant requests that the rejection and its finality be withdrawn.

As discussed and addressed in connection with the previous Office Action Response filed on January 14, 2004, the asserted combination of alleged prior art is improper because it would frustrate the purpose and operation of the '588 reference. *See* MPEP § 2143.01 (when a proposed modification would render the teachings being modified unsatisfactory for their intended purpose, then there is no suggestion or motivation to make the proposed modification under 35 U.S.C. § 103(a)). The Office Action acknowledged that

the '588 reference fails to teach sequences of variable-amplitude pulses with each of the sequences having a different average amplitude value, as claimed. *See* Office Action, page 4. Attempting to overcome this deficiency, the Office Action proposed using the '976 reference's teachings regarding variable amplitude pulses in the '588 reference's processing system.

Applicant responded by pointing out that a required aspect of the '588 reference's primary embodiment is that each pulse sequence has a single gain level. *See* column 2, line 11. Applicant submitted that the Office Action failed to comply with 35 U.S.C. § 132 for failing to explain how the '976 teachings would be combined with the '588 embodiment and, thereby, precluding Applicant from considering and responding to the merits of the proposed combination. The Office Action has again failed to provide such an explanation of the proposed combination. Notwithstanding the lack of compliance with 35 U.S.C. § 132, Applicant surmised that the proposed modification was to replace the '588 processing of the plurality of single gain pulses with the '976 reference's pulse encoding principle. If the Examiner is suggesting that the differing gain values should be replaced by the '976's amplitude selector 112, which provides a specific function  $S_p$  (*see* '976 reference at Col. 12, lines 24-33), the '588's purpose (matching the target vector via performing single gain multi-pulse analysis a number of times) would be destroyed. If the amplitude selector 112 replaces the multiple single gain multi-pulse analysis, then the gain is "pre-established" per the '976 teachings; therefore, the gain is identified without a recurring process (*see* '588 reference col. 1, lines 49-55 and col. 2, lines 1-6). This '976 encoding principal would not function at all in the '588 embodiment and, adopting the Office Action's interpretation of the '976 variable-gain encoding principal, the '588 embodiment would no longer have the required single-level pulse sequences. In this regard, the proposed combination would frustrate the operation and purpose of the '588 embodiment. Thus, the Office Action's proposed combination is improper and the rejection cannot be maintained.

#### **Examiner's Stated Motivation for the Proposed Combination is Untenable**

The Examiner's stated motivation for the proposed combination is illogical and untenable. The Examiner provides the unsupported statement that the skilled artisan would combine the cited references to obtain a "very good performance" "without paying

a heavy price.” The Examiner’s failure to explain how a “very good performance” would be achieved should be clear in view of the above-discussed resulting inoperable device constructed via this hindsight rejection. The ‘588 reference teaches an embodiment that attempts to match a target vector by performing single gain multi-phase analysis a number of times, each with a different gain level. The ‘976 approach, upon which the Examiner is relying, is an encoding technique that uses a special amplitude selector 112 (Figs. 3A, B and C) to provide a pre-established function (*i.e.*, a pre-established gain) for a pre-assigned relationship to the speech signal (*see* Col. 12, lines 29-33). Replacing the ‘588 multi-phase analysis approach (using different gain levels) with the ‘976 pre-established function would eliminate the recurring process for target vector matching and destroy the ‘588 method. The Office Action fails to present any evidence of the alleged motivation and the cited teachings would certainly not be motivated. Without a presentation of evidence of motivation, the Section 103(a) rejections cannot stand. Applicant accordingly requests that the rejections be withdrawn.

Applicant again traverses the Section 103(a) rejection of claim 28 because the Office Action lacks compliance with 35 U.S.C. § 132 for failing to explain how the teachings of *Sklar* would be combined with the modified ‘588 embodiment, and because the Office Action fails to cite any evidence in support of the notion that the skilled artisan would be led by the prior art to implement this asserted combination of teachings. In this regard, the rejection has not afforded Applicant opportunity to consider and respond to the merits of this proposed combination of three different teachings. *See* 35 U.S.C. § 132. Moreover, the proposed modification (to replace the ‘588 processing of the plurality of single gain pulses with the ‘976 reference’s pulse encoding principle and also the cited teaching of *Sklar*) would neither correspond to Applicant’s claimed invention (as explained above), would frustrate the purpose and teachings of the ‘588 reference, and would not (contrary to the unexplained assertion in the Office Action) necessarily result in improved output speech quality. Applicant respectfully submits that no evidence has been presented that such a combination of prior art teachings has ever

been suggested or even considered. Applicant respectfully submits that the rejection of claim 28 is improper and, accordingly, requests that the rejection be withdrawn.

In view of the above discussion, Applicant believes that the rejections have been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

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